

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date: JAN 27 1997

NO PROTEST RECEIVED
Release Copies to District

Date 3/25/97
Signature [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(7) of the Internal Revenue Code.

Your Articles of Incorporation state your purpose is to provide care for the needy of the area, participate in community programs, and sponsor youth activities and athletic leagues in order to promote the positive ideals [REDACTED] and to make distributions to organizations described in [REDACTED] of the Code. You also stated you were formed to provide a place for [REDACTED] and to provide community athletic associations funding to operate youth athletic leagues.

You stated you have two classes of membership - active and social. Active members are [REDACTED] Active members have voting privileges. Social membership is open to anyone endorsed by current members. Social members do have not voting privileges. You did not provide information regarding your dues structure or the different privileges, other than voting rights, for the different classes of membership. You indicated there are a total of 952 members of which 402 were [REDACTED] 300 [REDACTED] and 250 social members.

Your primary income is from bingo and the operation of a canteen for members and guests. In an undated letter received on June 3, 1994, you stated that it is assumed that all bingo income is from non members. The following is information you provided regarding your sources of income:

[REDACTED]

	March 31, 1992	March 31, 1991
Bingo	\$232,425.96	\$173,087.92
Bar/Rest.	130,322.34	147,913.59
Dues	2,511.00	3,065.00
Interest	332.37	398.28

Your expenses included:

	March 1992	March 1991
Bingo Exp.	\$ 105,520	\$ 94,126
Payroll	10,949	9,702
Supplies	2,970	5,231
Conventions	3,103	781
Quarter-Master	1,656	2,200
Insurance	160	2,369
Misc.	1,122	1,013
Licenses	824	785
Entertainment	200	
Maintenance		3,886
Contributions	14,303	3,791
Total Expenses:	40,109	35,838

You did not provide a response to the questions asked in our December 13, 1993, letter. You did not provide the following:

1. A detailed narrative description of all activities, including the purpose, where the activity is conducted, by whom conducted, number of members conducting the activity, number of hours per month the activity is conducted, if the activity is open to the general public, and type of records maintained to show attendance and source of funds (members/non member) for each activity.
2. Detailed information regarding your bingo activity, including copies of advertisements, leases for equipment and/or facility, relationship between your officers and members and your supplier, supplier agreement, and copies of your financial statements with regard to the bingo activity.
3. Information regarding controls to ensure contributions are used for the purposes intended.
4. A detailed description of your bar activity including whether the activity is open to the general public, what type of records are maintained, how you enforce a members only requirement if applicable, and whether you

[REDACTED]

conduct any other activities in the bar such as pull-tabs.

5. An explanation of your occupancy expense, including whether you rent or own your facility, a copy of the lease if applicable, an explanation of how you determined the fair market value of the lease if applicable.

6. A copy of your bylaws.

Section 501(c)(7) of the Code exempts from Federal income tax "Clubs organized for pleasure, recreation and other non-profitable purposes, substantially all of the activities of which are for such purposes and no part of the net earning of which inures to the benefit of any private shareholder." Such clubs must not have a policy of discrimination on the basis of race, color, or religion.

P.L. 94-568, as indicated in Senate Report No. 94-1318, 94th Congress 2d. Session, provides that substantially all of the social club's activities must be for pleasure, recreation, and other non-profitable purposes. The Committee Reports show that it is intended that clubs may receive up to 35 percent of their gross receipts from nonmembers. Gross receipts include income set aside to be used for religious, charitable, etc. uses. A facts and circumstances test may be used to show that substantially all of the activities are for section (c)(7) purposes.

Rev. Rul. 70-48, 1970-1 C.B. 133, found that when nonvoting members pay disproportionately more for services and use of the facilities than voting members, there is inurement and the club does not qualify for exemption under section 501(c)(7).

Rev. Proc. 71-17, 1971-1 C.B. 683, describes circumstances under which nonmembers who use club facilities will be assumed to be guests of members. The Rev. Proc. describes the records that need to be maintained by the club.

A social club must not only have a common objective but must be able to show that the common objective is directed towards pleasure, recreation, and other non-profitable purposes. Generally "other non-profitable purposes" means other purposes similar to pleasure and recreation. The exemption of social clubs is based on the logic of allowing members to pool their funds for recreational purposes, rather than by any compelling public benefit conferred by social clubs.

Section 501(c)(7) of the Code has two organizational requirements. Section 501(c)(7) organizations must (1) be orga-

[REDACTED]

nized for pleasure, recreation, or other nonprofitable purposes; and (2) not have a written policy which provides for discrimination on the basis of race, color, or religion. A club is permitted to restrict membership by use of criteria that is not directly related to social or recreational purposes or activities.

In applying the term "other nonprofitable purposes" it has long been held and sustained by the courts that this means other purposes similar to pleasure and recreation. See Keystone Automobile Club v. Commissioner, 181 F. 2d 402 (1950). While the governing instrument is not required to state that a club is organized exclusively for "pleasure, recreation, and other nonprofitable purposes," it must not expressly authorize the club to engage in activities beyond the scope of 501(c)(7) to a degree that would prevent the organization from being described as a social club. Your Articles do not indicate that you are organized and operated for section 501(c)(7) purposes. Your Articles state your purpose is to provide care for the needy of the area, participate in community programs, and sponsor youth activities and athletic leagues in order to [REDACTED] and to make distributions to organizations described in [REDACTED]. These purposes do not promote pleasure, recreation, and other nonprofitable purposes for your members.

Many clubs establish several types of membership. The mere fact that a club has a nonvoting class of membership is not, in and of itself, a sufficient basis for nonrecognition of exemption. Normally for each class there are certain eligibility requirements and a formal admittance procedures. Inurement often occurs when clubs have more than one class of members. If, for example, nonvoting members pay disproportionately more for services and use of the facilities than voting members, there is inurement and the club does not qualify for exemption under section 501(c)(7) unless there is a reasonable basis for the difference. You stated you have 2 classes of members, however you did not provide copies of your bylaws or other Board resolutions to establish eligibility requirements, formal admittance procedures, or your dues structure. You did not show that having two classes of members is based on a reasonable basis and does not result in inurement which is prohibited under section 501(c)(7) of the Code.

Clubs may receive up to 35 percent of their gross receipts, including investment income, from sources outside their membership. Within the 35 percent limitation, no more than 15 percent of gross receipts may be derived from nonmember use of club facilities and/or services. If the 35 percent and/or 15 percent limitations are exceeded, a club may still be able to show

[REDACTED]

through the facts and circumstances that "substantially all" of its activities are for "pleasure, recreation, and other nonprofitable purposes." Gross receipts are defined for this purpose as those receipts from the traditional, normal, and usual activities of the club such as charges, admissions, membership fees, dues, assessments, investment income, and normal recurring capital gains. While section 512(a)(3) exempts income set aside to be used for religious, charitable, scientific, literary, educational purposes or the reasonable cost of administration of these activities in the application of unrelated business income tax to investment income, for the purposes of the 35 per cent limit, this exempt function income is included in the numerator and denominator. All fixed costs - those costs the club's members would have to bear in the absence of non member income - such as rent, depreciation, utilities, maintenance, etc., can not be charged against non member income for this purpose. If the exempt function income causes the organization to exceed the 35 percent limit, the organization will not be exempt unless the facts and circumstances warrant otherwise. Profits derived from nonmembers, unless set aside, subsidize the club's activities for members and result in inurement within the meaning of section 501(c)(7).

The information you provided indicated that your primary source of income is from bingo (approximately 65%). You have stated that this income is from non members. You did not provide information as to whether your canteen is open to the general public or is for members and their bona fide guests. Your financial statement does not provide a set aside for charitable purposes, but appears to combine your bingo income and expenses with your other income and expenses. It appears you are using your income from bingo to pay for your canteen and facility expenses.

Based on the information provided, you are not organized or operated within the scope of section 501(c)(7) of the Code. Therefore, you do not qualify for tax exempt status as an organization described in section 501(c)(7).

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have the right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a

[REDACTED]

proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

[REDACTED]

You are required to file federal income tax returns, Form 1120, with your local District Director. Donors may not deduct contributions to you under section 170 of the Code.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office.

Sincerely yours,

bcc: [REDACTED]

bcc: [REDACTED]

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer
Code	[REDACTED]				
Surname	[REDACTED]				
Date	[REDACTED]				